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Mars Home for Youth and Pennsylvania Social Services Union, Local 668, a/w Service Employees International Union. Case 6–CA–37135

January 18, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE
AND HAYES

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and a first amended charge filed by the Union on October 25 and November 1, 2010, respectively, the Acting General Counsel issued the complaint on November 4, 2010, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 6–RC–12692. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On November 24 and 30, 2010, respectively, the Union and the Acting General Counsel filed Motions for Summary Judgment. On November 30, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. The Respondent filed a response, and the Charging Party filed a brief in support of the motions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motions for Summary Judgment¹

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis that the assistant residential program managers (ARPMs) included in the unit are supervisors and that the Union was therefore improperly certified in the representation proceeding.²

¹ Member Hayes did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is therefore appropriate.

² The Respondent’s answer denies par. 8 of the complaint, which sets forth the appropriate unit. The Respondent also denies the appropriateness of the unit in its response. The unit issue, however, was litigated and resolved in the underlying representation proceeding. Moreover, the Respondent’s affirmative defenses, i.e., that the certification is invalid because the number of supervisors in the unit was sufficient to affect the outcome of the election and that the inclusion of supervisors in the voting group had a coercive effect on the outcome of

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motions for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania non-profit corporation, with an office and place of business in Mars, Pennsylvania, has been engaged in the provision of residential, educational, and community-based services for at-risk youth.

During the 12-month period ending September 30, 2010, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Mars, Pennsylvania facility, products, goods, and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Pennsylvania Social Services Union, Local 668, a/w Service Employees International Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on January 5, 2010, the Union was certified on August 19, 2010, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time residential advisors and assistant residential program managers employed by Mars Home for Youth at its Mars, Pennsylvania facility; excluding office clerical employees, therapists, teachers and guards, other professional employees, and supervisors as defined in the Act and all other employees.

the election, are no more than additional contentions that the unit is not appropriate. Accordingly, the Respondent’s denial of the appropriateness of the unit and its related affirmative defenses do not raise any litigable issue in this proceeding.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About October 4, 2010, the Union, by email, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about October 21, 2010, the Respondent, by letter, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about October 21, 2010, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER³

The National Labor Relations Board orders that the Respondent, Mars Home for Youth, Mars, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Pennsylvania Social Services Union, Local 668, a/w Service Employees International Union, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time residential advisors and assistant residential program managers employed by Mars Home for Youth at its Mars, Pennsylvania facility; excluding office clerical employees, therapists, teachers and guards, other professional employees, and supervisors as defined in the Act and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Mars, Pennsylvania, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since on or about October 21, 2010.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 18, 2011

Wilma B. Liebman,

Chairman

³ Consistent with our recently issued decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), we have ordered the Respondent to distribute the notice electronically if it is customarily communicating with employees by such means. For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Mark Gaston Pearce,	Member
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Brian E. Hayes,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Pennsylvania Social Services Union, Local 668, a/w Service Employees International Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time residential advisors and assistant residential program managers employed by us at our Mars, Pennsylvania facility; excluding office clerical employees, therapists, teachers and guards, other professional employees, and supervisors as defined in the Act and all other employees.

MARS HOME FOR YOUTH